

National Institute of Standards and Technology

**HOLLINGS MEP  
GENERAL TERMS AND CONDITIONS**

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## **GENERAL TERMS AND CONDITIONS**

### **HOLLINGS MANUFACTURING EXTENSION PARTNERSHIP**

The General Terms and Conditions set forth below, apply to all Recipients of cooperative agreement awards under the Hollings Manufacturing Extension Partnership program, 15 U.S.C. Part 278k, 15 C.F.R. Part 290, unless otherwise amended through a Special Award Condition.

#### **1. AWARD INSTRUMENT**

This cooperative agreement is a funding instrument that is based upon the cooperative or joint implementation of manufacturing extension activities. This agreement provides the framework for the joint execution of these activities between the Recipient operator of the MEP Center, hereinafter referred to as a Center or Recipient, and the National Institute of Standards and Technology (NIST), Hollings Manufacturing Extension Partnership (MEP), hereinafter referred to interchangeably as NIST or MEP.

#### **2. ORDER OF PRECEDENCE OF TERMS AND CONDITIONS OF AWARD**

Where the terms of the award differ from the Recipient's proposal or from its Operating or other required plans, the terms and conditions, including special award conditions (SACs), of the award shall prevail. The Recipient is obligated to bring to the attention of the Grants Officer any perceived differences between the terms and conditions of the award and the Recipient's proposal, Operating and other required plans.

#### **3. APPLICABILITY OF AWARD PROVISIONS**

Recipients and sub-recipients are subject to all Federal laws, Federal and Department of Commerce (DOC) policies, regulations, and procedures applicable to Federal financial assistance awards. See also DOC Financial Assistance Standard Terms and Conditions (January 2013).

#### **4. STATEMENT OF SUBSTANTIAL INVOLVEMENT**

NIST will be substantially involved in this cooperative agreement. NIST involvement may include the types of substantial involvement described in Final Office of Management and Budget Guidance Implementing the Federal Grant and Cooperative Agreement Act, 43 Fed. Reg. 36860-65 (Aug. 18, 1978). In addition, NIST involvement in this cooperative agreement may include the activities described in MEP General Terms and Condition 10, as well as the following NIST monitoring and oversight activities:

- Guidelines and assistance in developing required plans,
- Linkages to the national manufacturing extension system,
- Access to standard tools, training, and the experience developed to date by the national extension system,
- Guidance for evaluation of performance and collection of data and information from the Recipient organization,

- Timely response to requests for mandatory approvals,
- Assistance where possible in accessing solutions to technical and managerial problems,
- A framework for performance to high standards and assistance in achieving and maintaining high standards, and
- Assistance to the Recipient organization to define, understand and resolve issues pertaining to the successful implementation of the MEP project.

The Recipient shall:

- Develop, submit, and follow required plans and budgets,
- Conduct the tasks necessary to provide the services or complete the objectives described in the proposal and these plans timely and responsively,
- Prior to development of new tools, products or resources, investigate existing tools, products or resources available commercially, through MEP, or the national system, as appropriate,
- Participate in activities of the MEP national manufacturing extension system,
- Submit detailed technical and financial reports,
- Participate in Program Reviews, and
- Conform to terms and conditions of this cooperative agreement and applicable regulations and laws.

The specific rights and obligations of the parties involved in this project are detailed in the remaining sections of this cooperative agreement.

## **5. COOPERATIVE AGREEMENT AWARD PERIODS**

MEP awards are made with the intent to maintain a long-term partnership between the Department of Commerce and the Recipient for those projects established under long term planning goals and objectives common to the research and programmatic needs of both parties. See DOC Grants Manual and 15 U.S.C. Part 278k. The MEP project may continue to be considered for funding without competition based on the recommendation of an independent merit review panel every two years, pursuant to 15 U.S.C. Part 278k.

If a Recipient is recommended for funding, funds are available, and an award continues successfully, a new cooperative agreement number will be issued every five years. Funding may be awarded for up to one year, and renewed annually for up to four additional years, contingent upon applicable award terms, laws, policies and the availability of funding. After five years, if funding will be continued, a new cooperative agreement number will be issued.

## **6. STATEMENT OF WORK AND REQUIRED PLANS**

The tasks to be performed by the Recipient under this award are detailed in the original proposal as amended by the required Operating Plan and other required plans. During this period, if any modifications are required to the Operating Plan(s) or to other plans, these modifications must be submitted to the MEP Federal Program Officer in writing and are not effective unless and until approved in writing by the NIST Grants Officer. These modifications will be incorporated as amendments to the original cooperative agreement.

The Recipient shall submit an updated Operating Plan annually detailing project progress on the previous year's plan and providing an Operating Plan for the next year's activities. The Operating Plan must be consistent in form and substance with the current MEP Operating Plan Guidelines, which may be amended from time to time. Updated Operating Plans shall incorporate strategic planning efforts.

A draft Operating Plan shall be submitted to the MEP Federal Program Officer for comment at least 90 days prior to the end of the current operating year. A final annual Operating Plan must be submitted to MEP at least 60 days prior to the end of the current operating year.

## **7. COMPOSITION OF BOARD OF DIRECTORS/TRUSTEES**

MEP has determined that Centers clearly benefit when a majority (or more) of its Board of Directors/Trustees consist of committed partners representing principally small and medium manufacturing that do not have dual obligations to more than one MEP Center. Therefore, two-thirds of the members of the Center's oversight board must not be members of any other MEP Center boards. If the Center does not currently meet this requirement, the Center must submit a detailed plan, including a timeline and dates for establishing within 12 months, an independent Board of Directors/Trustees, at least two-thirds of the members of which are not officers or board members of any other Center.

## **8. SIGNATORY AUTHORITY FOR AWARD DOCUMENTS**

The NIST MEP Program does not authorize the delegation of signatory authority by the Recipient to any other organization or to any individual who is not a Recipient's Board Member or a duly-authorized direct employee of the Recipient. Documents subject to this policy include but are not limited to: CD-450, Financial Assistance Award; CD-451, Amendment to Financial Assistance Award; CD-511, Certification Regarding Lobbying; SF-424, Application for Federal Assistance; SF-424B, Assurance – Non-Construction Programs; and SF-425, Federal Financial Report, ASAP drawdown requests, and all agreements on behalf of the Recipient. Such documents must be signed by either a duly authorized member of the Fiduciary Board of Directors, or by a duly-authorized direct employee of the Recipient. NIST will return to the Recipient unprocessed any documents it receives that do not comply with this policy.

## **9. NOTIFICATIONS AND PRIOR APPROVALS**

The Recipient must notify and obtain the prior written approval from the NIST Grants Officer for those budget and programmatic changes set forth in 15 C.F.R. Part 14.25 or 15 C.F.R. Part 24.30 (as applicable), and in the DOC Financial Assistance Standard Terms and Conditions (January 2013), which include but are not limited to the following items:

- A. **Scope Changes.** Changes in the scope or objective of the project even if there is no associated budget revision requiring prior approval. A change in the scope or objective of the project may occur, for example, based on material changes to the activities to be performed, or contributions to be made, by the recipient, sub-recipients, contractors or third-party contributors, including but not

## NOTIFICATIONS AND PRIOR APPROVALS (CONTINUED)

limited to the development of tools, systems, or other resources not discussed in the Recipient's proposal or Operating Plan (as the case may be) and included in the currently approved project budget.

- B. **Key Personnel Changes.** Additions or changes in Key Personnel or the absence for more than three (3) months or a 25 percent reduction in time devoted to the project by the approved Center Director. Key Personnel include Center Directors, Chief Financial Officer, Managers, and Technical Staff whose expertise or experiences affect the basis of the proposal.
- C. **Equipment Purchases.** Acquisitions of equipment where prior approval is required under the Federal cost principles applicable to the award, unless the purchase of such equipment is specifically identified in the currently approved project budget.
- D. **Plan Changes.** Original Proposal, Operating, and other required plans under the award.
- E. **Budget Changes, Revisions, Transfers.** Identified in 15 C.F.R. Part 14.25 or 15 C.F.R. Part 24.30 (as applicable), or in Section A.04 of the DOC Financial Assistance Standard Terms and Conditions.
- F. **Recipient Changes.** Transfer, pledge, mortgage, assignment or other encumbrance upon any portion of the award funds, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions without the express written approval of the Grants Officer. (See Section B.06 of the DOC Financial Assistance Standard Terms and Conditions.)
- G. **Subawards.** The prior written approval of the NIST Grants Officer is required for subawards (including an award made by a sub-recipient to a lower-tier recipient), with budgeted amounts of \$100,000 or more, and extends to subawards that when added to the value of prior awards to the same (or affiliated) entity, have a total combined value of \$100,000 or more, unless such actions are described in the Recipient's Original Proposal or Operating Plan and incorporated into the currently approved project budget under the award. Once the \$100,000 threshold is invoked, all subsequent subawards to that entity must receive prior approval from the NIST Grants Officer. An explanation of the Recipient's valuation and allocation to the MEP award of subrecipient cost share contributions in accordance with applicable Federal cost principles must be submitted to NIST as part of the Recipient's request for approval of the subaward agreement. In addition, documentation supporting the Recipient's valuation and allocation to the MEP award of subrecipient cost share contributions must be provided to the NIST Grants Officer upon request. This provision does not apply to the purchase of supplies, material, equipment or general support services, unless prior approval is otherwise required under the Federal cost principles applicable to the award.
- H. **Contracts.** The prior written approval of the NIST Grants Officer is required for contracts of \$100,000 or more and extends to contracts that, when added to the value of prior awards to the same (or affiliated) vendors, have a total combined value of \$100,000 or more. Once the \$100,000 threshold is invoked, all subsequent contracts to that vendor (or affiliated vendors) must receive

## NOTIFICATIONS AND PRIOR APPROVALS (CONTINUED)

prior approval from the NIST Grants Officer. The Recipient is to provide copies to the NIST Grants Officer, NIST MEP Federal Program Officer, and NIST MEP Regional Manager for Strategic Transition (RMST) of all proposed contracts to that same vendor or affiliated vendors that individually or cumulatively total or exceed \$100,000. This provision does not apply to the purchase of supplies, material, equipment or general support services, unless prior approval is otherwise required under the Federal cost principles applicable to the award.

- I. **MEP Core Management and Oversight Functions.** A Center, as a direct Recipient of Federal financial assistance funds under an MEP cooperative agreement, must possess and maintain, at all times during the MEP award period, the accountability for managing and executing all functions material and inherent to the successful operation of a Center, which includes, but are not limited to, the following:
- **Budget execution**, including the responsibility for determining and executing budget policy, guidance and strategy, and the determination of program priorities and associated budget or funding requests.
  - **Policy implementation**, including the responsibility for determining the content and implementation of financial and program policies and procedures impacting the Recipient's MEP project.
  - **Human resources management**, including the responsibility for selecting individuals or contractors for Center employment, and the direction, control, and performance management of Center employees and contractors.
  - **Strategic planning and project execution and management**, including the responsibility for:
    - **Strategic planning** functions such as the following: determination of project requirements, approval of a project implementation strategy, and the development and monitoring of agreements and statements of work with subrecipients, vendors and other strategic partners.
    - **Project execution and management functions** such as submission of required financial and technical reports, maintenance of an adequate financial management system, including whether costs charged against an MEP award are reasonable, allocable, and allowable under applicable Federal costs principles; and adherence to the terms and conditions of the MEP award.

In extraordinary situations, the NIST Grants Officer may allow a Recipient to temporarily outsource its management and oversight responsibilities under an MEP award. In such cases, the Center must provide the NIST Federal Program Officer with a detailed explanation and accompanying documentation (e.g. copies of contracts and other agreements) supporting its request and must also receive the prior written approval of the NIST Grants Officer. This pre-approval requirement applies to any contracts, subawards or other arrangements, regardless of the title or funding amount that would act to outsource some or all of the Recipient's responsibility for managing and/or overseeing the administration of an MEP award.

## NOTIFICATIONS AND PRIOR APPROVALS (CONTINUED)

- J. **Third Party Contributor Agreements (TPCs).** The prior written approval of the NIST Grants Officer is required for TPC agreements valued at \$100,000 or more, and extends to TPCs that when added to the value of prior awards to the same (or affiliated) entity, have a total combined value of \$100,000 or more, unless such actions are described in the Recipient's Original Proposal or Operating Plan and incorporated into the currently approved project budget under the award. Once the \$100,000 threshold is invoked, all TPCs from that entity must receive prior approval from the NIST Grants Officer. An explanation of the Recipient's valuation and allocation to the MEP award of third party cost share contributions in accordance with applicable Federal cost principles must be submitted to NIST as part of the Recipient's request for approval of the third party contributor agreement. In addition, documentation supporting the Recipient's valuation and allocation to the MEP award of third party contributor agreements must be provided to the NIST Grants Officer upon request.
- K. **Unexpended Program Income.** Carryover of unexpended program income as described in this MEP General Terms and Conditions, Section 12.
- L. **Unexpended Federal Funds.** Carryover of unexpended Federal funds from prior funding period(s), as discussed in MEP General Terms and Conditions, Section 13.
- M. **Foreign Travel.** The Recipient shall comply with the provisions of the Fly America Act (49 U.S.C. Part 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. Part 301-10.131 through 301-10.143. The Recipient must receive prior approval of the NIST Grants Officer in accordance with 41 C.F.R. Part 301-10.142 if a foreign air carrier is anticipated to be used for any part of foreign travel under an MEP cooperative agreement. See also DOC Financial Assistance Standard Terms and Conditions, L.02

## 10. INTERACTIONS WITH NIST AND OTHER MANUFACTURING EXTENSION PARTNERSHIP ORGANIZATIONS

It is anticipated that a Center will enter into agreements with other entities such as private industry, universities, and State governments to accomplish programmatic objectives and access new and existing resources that will further the impact of the Federal investment made on behalf of small- and medium-sized companies. 15 U.S.C. Part 278k(c)(3)(C).

To facilitate a more rapid transfer of advanced manufacturing technology on a national scale and to avoid duplication of effort, the Recipient shall cooperate with NIST and the other NIST MEP organizations by participating in coordinated joint program activities. Such activities may include, but are not limited to the following: participation in NIST MEP national and regional meetings, communities of practice, and sharing of expertise, products and resources within the MEP system.

The interactions of NIST MEP under this cooperative agreement include direct involvement in helping the Recipient define, understand, and resolve problems in the organization's operations and promoting continuous improvement. The interactions of NIST MEP may include the use of consultants or panelists with special expertise or experience.

NIST may take other appropriate steps, or provide other appropriate assistance, to ensure that the organization operates in a manner which most effectively promotes U.S. manufacturing competitiveness, including initiating and facilitating revision of Operating Plans (or other required plans) as soon as the need for such revisions are identified either by NIST or the Recipient.

## **11. COST SHARING AND MATCHING**

The minimum cost-sharing ratio required by 15 C.F.R. Part 290.4.b. is 66.67% Recipient contribution and 33.33% NIST contribution for the fifth year and beyond. (See Department of Commerce Financial Assistance Standard Term and Condition A.03 for the treatment of cost sharing). There can be no carryover of excess cost share from one year to the next.

The Recipient may establish, through its leveraged partnerships, a cost share ratio exceeding the required cost-sharing ratio. The recipient is responsible for the management of the overall program as defined in the Operating Plan and Budget and will document and report on the entire activity of the project. However, NIST only holds the Recipient responsible for the statutory minimum cost-sharing ratio level for the purposes of drawing down the Federal cost share.

Any cost sharing must be in accordance with the Recipient's approved project budget and must adhere to the "cost sharing or matching" provisions of 15 C.F.R. Part 14.23 or 15 C.F.R. Part 24.24 (as applicable) and Department of Commerce Financial Assistance Standard Terms and Conditions, A.03. Costs included as cost share must be allocable to the project and allowable under the applicable Federal cost principles.

Costs incurred as non-Federal cost share are subject to the same allowability requirements as Federally-funded costs. The disallowance of any contributed costs as a result of an audit could result in a Recipient not meeting its required cost share under the cooperative agreement and a refund being due the Federal Government for the excess Federal share.

### **A. Types of Non-Federal Cost Share**

Non-Federal cost share can be contributed by the Center, sub-recipients, and third parties. Contractors cannot provide cost share in the form of discount or reduced billing rate. Per 15 C.F.R. Part 290.4(c), the Recipient may, to the extent expended for allowable project costs, count as part of its non-Federal cost share:

- Dollar contributions from state, county, city, industrial, or other sources;
- Revenue from licensing and royalties;
- Fees for services performed;
- [Third party] in-kind contributions of full time personnel;
- [Third party] in-kind contribution of part time personnel, equipment, software, rental value of centrally located space (office and laboratory), and other related contributions up to a maximum of one-half of the Recipient's annual share.

Non-Federal cost share contributions must satisfy the criteria set forth in 15 C.F.R. Part 14.23 or 15 C.F.R. Part 24.24, and in 15 C.F.R. § 290.4 in order to be allowable under an MEP award.



## **B. Documenting Non-Federal Cost Share**

Under 15 C.F.R. Part 290.4 (c)(1) – (3), Centers must have documented evidence of all cash received from any contributor. This evidence may be in the form of a letter and a bank account statement displaying an electronic funds transfer from a cash contributor to the Center's bank account.

## **C. Documenting Third Party In-kind Contributions Under 15 C.F.R. Part 290.4(c)(4) and (5):**

All third party non-cash contributions are considered "in-kind." Per 15 C.F.R. Part 14.2(nn), third party in-kind contributions mean the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies, and other expendable property, and the value of goods, services, and personnel directly benefiting and specifically identifiable to the project or program. See also 15 C.F.R. 24.3.

Third Party In-Kind Contributions must be evidenced by written documentation that is signed by the contributor and Center that describes the contribution, its value, and when and for what purpose it was donated. The Center must provide an acknowledgement of the contribution and include all the information required by IRS Instructions for Form 8283. This form can be found at <http://www.irs.gov/pub/irs-pdf/f8283.pdf>.

Centers must have documented evidence of the third party in-kind contribution from the contributor. This evidence must include documentation from the contributor that contains:

- The value of each third party in-kind contribution established in accordance with the applicable cost principles, (see 15 C.F.R. Part 14.23 or 15 C.F.R. Part 24.24, and the applicable cost principles: 2 C.F.R. Part 220 (replaces OMB Circular A-21), 2 C.F.R. Part 225 (replaces OMB Circular A-87 and 2 C.F.R. Part 230 (replaces OMB Circular A-122),
- The valuation and allocation methods used by the Recipient for purposes allocating third party in-kind contributions to the MEP award shall be submitted as part of the Center's operating plan and must be approved by NIST MEP and the Grants Officer. Upon request, the Recipient shall provide NIST MEP and the Grants Officer with documentation supporting the allocation and valuation of third party in-kind contributions,
- A list of the type of third party in-kind contribution, and
- The percentage of time that the contribution was used to support the MEP Project. If the percentage of time is 100% dedicated to the MEP project and personnel is classified as a full-time employee as defined under applicable state labor law, then the individual(s) is considered to be a full time personnel under 15 C.F.R. Part 290.4(c)(4). Therefore, the 50% in-kind limitation under 15 C.F.R. Part 290.4(c) (5), does not apply.

#### D. Documenting Sub-recipient Cost Contributions

All sub-recipients must adhere to the same documented evidence requirements as those imposed on the Center. At a minimum, the following documents should be maintained by the Center and/or sub-recipient(s) and made available in the event of an audit:

- Sub-award Agreement
- Documentation to support valuation of third party in-kind contributions
- Sub-recipient Financial Reporting
  - Monthly or Quarterly Statement of Revenue, Expenses and Fund Balance
  - Actual vs. Budget Expense Detail Schedule - by account classification and by third party cash, third party in-kind, non-Federal share and Federal cost share
  - Actual vs. Budget Cash Flow Statements
  - Sub-recipient Program Tracking Documents
  - Monthly or quarterly report of Program Income (list by major types or programs)
  - Written narrative of technical progress report

#### 12. PROGRAM INCOME (as referenced at 15 C.F.R. Part 14. 24, and 15 C.F.R. Part 14.25)

- A. Program income earned during the project period shall be retained by the Recipient and shall be used by the Recipient in the following order of priority:
  - (1) **First**, to finance the minimum non-Federal share of the project.
  - (2) **Second**, all program income earned in excess of that required to meet the minimum non-Federal share shall be added to the funds committed to the project by MEP and the Recipient and used to further eligible project objectives and activities if declared and explained within the Center's annual operating plan (commonly referred to as the "additive approach").
- B. Recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.
- C. Costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.
- D. Proceeds from the sale of property shall be handled in accordance with the requirements of Property Standards in 15 C.F.R. 14.30 through 14.37 or 15 C.F.R. 24.31 and 15 C.F.R. 24.32.
- E. Recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award.
- F. Unexpended program income:
  - (1) Program income in excess of what is required annually to meet the minimum non-Federal portion of the annual operating budget, and cannot be expended using the additive approach during the operating period, may be carried over to the subsequent funding period or otherwise disposed of, if declared and explained within the Center's annual operating plan and approved in writing by the Grants Officer.
  - (2) Requests for carryforward of unexpended program income to a subsequent operating year must be made in writing to the NIST Grants Officer. The NIST Grants Officer will generally only approve carryover of 50% or less of the annual Federal funding amount in undisbursed program income with the expectation that the Center will work with their

assigned RMST to ensure that it reinvests undisbursed and future program income strategically into the project. The NIST Grants Officer will provide the Recipient with written approval or denial of a request to carryforward unexpended program income.

(3) Additional NIST MEP funding may be delayed until a Recipient's unexpended program income level is acceptable to NIST.

(4) Upon close-out of an MEP award, the NIST Grants Officer will provide Recipient(s) with close-out instructions, including instructions regarding disposition of program income.

### 13. UNEXPENDED FEDERAL FUNDS

NIST MEP does not anticipate Centers having Unexpended Federal Funds (UFF) at the end of an annual funding period; however, if a Center has UFF at the end of the current operating period, it may request that the NIST Grants Officer approve the carry forward of those funds into the next operating year. There are two options available for carrying UFF forward, as outlined below.

**Option A – Carry Forward Toward Base:** If a Center has UFF at the end of its current operating year that it wishes to carry it forward **towards** the normal base funding in the new operating year, the Center is required to submit to NIST MEP a letter requesting approval of this action. The letter should include an explanation of why the funds were not expended and acknowledgement that the request will offset the amount of new Federal funding the Center is requesting. This offset **cannot** be recovered later in the Operating Year.

**Option B – Carry Forward Above Base:** If a Center has UFF at the end of its operating year that it wishes to carry forward **above** its annual award amount, the Center is required to submit to NIST MEP a letter requesting approval of this action. The letter should include an explanation of why the funds were not expended in the previous operating year and detail how the UFF will be applied in the new Operating Year to expand the Center's normal scope of operation.

In both situations, the Center should also submit:

- Revised operating plan budget and SF-424A for the **prior year** to reflect where the funds were not expended.
- Revised SF-424 and SF-424A for the **current year** that shows the combined annual base award amount and UFF amount
- Revised Operating Plan budget table that includes the UFF dollar amount and reflects the appropriate cost share
- Revised Operating Plan budget narrative that includes a description of the use of UFF

If the NIST Grants Officer, with NIST MEP's recommendation, approves the Center's request, the UFF from the previous operating year will be applied towards the NIST funding for the upcoming operating year, as specifically directed by the NIST Grants Officer.

If there are remaining Federal funds at the end of a five-year (or lesser) award period, these remaining funds will be **de-obligated**.

#### **14. FINANCIAL AND TECHNICAL REPORTING SCHEDULE**

Detailed Financial and Technical reports shall be submitted in the format and on a scheduled basis as specified in the most current version of the NIST MEP Management Information Reporting Procedure (This Document can be downloaded as a resource at <https://meis.nist.gov/>.) Pursuant to the DOC Financial Assistance Standard Terms and Conditions, A.01, the recipient shall submit a "Federal Financial Report" (SF-425) on a quarterly basis for the periods ending March 31, June 30, September 30, and December 31, unless otherwise specified in a Special Award Condition (SAC). Reports are due no later than 30 days following the end of each reporting period. A final SF-425 shall be submitted within 90 days after the expiration date of the award.

#### **15. PROGRAM PERFORMANCE REVIEWS**

Center funding is contingent upon positive program evaluations in an annual review, as required by 15 C.F.R. Part 290.8, statutory merit review panels, as required by 15 U.S.C. 278k(c)(5), and performance relative to client project follow-up per Section 16 of these General Term and Conditions.

Approximately 120 days prior to the end of each 12-month operating year, NIST MEP will conduct the appropriate Program Review. This review will focus on the Center's strategic alignment to the MEP overall program objectives, the Center's activities, progress and performance in implementing the MEP award, lessons learned, monitoring of sub-recipients, resource expenditures, activities planned for the next year, and any proposed changes to the project plan or budget.

The Recipient will be provided guidelines on the format for the review approximately 30 days prior to the Program Review.

The results of the Program Review will be incorporated into the Operating Plan for the next year of the project and submitted to MEP for approval 90 days prior to the end of the current project year.

NIST may implement cost disallowances, suspension, termination, or other enforcement action including the imposition of special award conditions (SACs) if the Recipient does not receive a positive evaluation in any required reviews, including reviews due prior to obligation of funds for this award or amendment.

#### **16. POST CLIENT PROJECT FOLLOW-UP**

The Recipient shall provide client and project data in the specified format to the organization identified by NIST MEP in order for post-project follow-up data to be obtained.

#### **17. REPORTS, SURVEYS, STUDIES, AND MANUALS**

All reports, plans, surveys, studies, and manuals developed, produced, or distributed under this cooperative agreement shall be submitted to the MEP Federal Program Officer (FPO). Each item shall consist of an electronic or paper copy, submitted in the format and within the timeframe specified.

## 18. RECORD-KEEPING

The Recipient shall keep complete and accessible detailed records on administrative and financial matters in accordance with the appropriate Federal regulations and OMB Circulars, as indicated on the Financial Assistance Award, Form CD-450, including any amendments thereto, and the terms and conditions of the MEP cooperative agreement.

## 19. AUDITS

Audit requirements applicable to this award are set forth in Section D. of the Department of Commerce Financial Assistance Standard Terms and Conditions applicable to this award. In addition, the MEP Audit & Compliance Guide is available at <https://meis.nist.gov/> under "Center Management + Knowledge Base/Conferences and Events /Session 'PC1: CFO Community of Practice / Cooperative Agreement Compliance.'" This document is intended to assist Recipients and their auditors in providing a general program overview and guidance in complying with program and government regulations. The Guide is not a compliance supplement and is not intended to amend, supersede or otherwise modify the requirements of OMB Circular A-133.

## 20. ENFORCEMENT AND TERMINATION

Failure to perform the work in accordance with the terms of the award and to maintain at least a satisfactory performance rating or equivalent evaluation may result in appropriate enforcement action under an MEP award. Pursuant to 15 C.F.R. Part 14.14, 14.61, 14.62, 24.12, 24.43, and 24.44, (as applicable) and DOC Financial Assistance Standard Terms and Conditions (January 2013), B.05, the Recipient's failure to materially comply with any or all of the provisions of the MEP cooperative agreement may be considered grounds for appropriate enforcement actions, including but not limited to:

- Designation as a "high risk" recipient;
- Imposition of special award conditions to address the area(s) of noncompliance;
- Changing the method of payment under the MEP award from advance to reimbursement only;
- Withholding payment of funds under the MEP award pending corrective action by the recipient;
- Disallowance of costs and establishment of an account receivable;
- Suspension of the MEP award; and
- Termination of the MEP award.

Depending on the nature and severity, a Recipient's failure to materially comply with the provisions of the MEP cooperative agreement award may also result in appropriate enforcement actions under other DOC awards and may also have a negative impact on the receipt of future funding from the Department of Commerce.